



Nathan Vasquez, Multnomah County District Attorney

1200 SW 1st Avenue, Suite 5200, Portland, OR 97204-1193
P: (503) 988-3162 | F: (503) 988-3643 | www.mcda.us

September 3, 2026

via email only

Patrick Cashman
pcashman20@gmail.com

Trevor Byrd
Deputy City Attorney
City of Portland
trevor.byrd@portlandoregon.gov

Re: Petition of Patrick Cashman seeking communications to or from a City of
Portland employee

Dear Mr. Cashman and Mr. Byrd:

On August 15, 2026, Mr. Cashman submitted a public records request to the City of Portland seeking all emails, texts, and written correspondence, including attachments, to or from City employee Michael Walsh that contained any of six search terms between July 21 and August 15, 2026. On August 28, 2026, the City released responsive records, redacting portions of some and withholding others in full. The City cited ORS 192.355(9), which incorporates the attorney-client privilege in OEC 503 into the public records law, and the conditional exemptions for records whose disclosure would interfere with public property or services, ORS 192.345(22), and for security measures, ORS 192.345(23).

Mr. Cashman petitioned this office the next day, as permitted by ORS 192.422, arguing that the City's privilege assertion was conclusory and overbroad, that the City withheld entire records without separating nonexempt material as ORS 192.338 requires, that the security exemptions were unsupported, that the City could not lawfully reserve the right to assert additional exemptions, and that the City did not sufficiently explain its search.

After receiving the petition, the City withdrew its reliance on ORS 192.345(22) and (23) and released the material it had redacted on that basis. The City provided the remaining redacted and withheld material for my review pursuant to ORS 192.422(2).

For the reasons discussed below, I find that the remaining redactions and withholdings are protected by the attorney-client privilege and deny the petition.

DISCUSSION

A. Attorney-Client Privilege – ORS 192.355(9) / ORS 40.225

The attorney-client privilege extends to public bodies, and ORS 192.355(9) incorporates it into the public records law as an unconditional exemption. *Port of Portland v. Or. Ctr. for Env'tl.*

Health, 238 Or App 404, 409 (2010); *Petition of Manning*, MCDA PRO 19-18 (2019) (“it is clear that the legislature has not permitted us to consider the public’s interest when evaluating an assertion of attorney-client privilege.”) The privilege protects “confidential communications made for the purpose of facilitating the rendition of professional legal services to the client,” including communications between a client’s representatives and the client’s lawyer. ORS 40.225(2)(a).

As a threshold matter, petitioner objects to the City’s bare assertion of attorney-client privilege in response to his request without any elaboration. A public body responding to a request must assert the exemption it relies on and, where that exemption is ORS 192.355(9), identify the state or federal law it relies upon. ORS 192.329(2)(b). The City did that here. The public records law does not require a privilege log be provided to a records requester. While a public body may for any number of reasons decide to provide more information about its decision to a requester, it is only required to explain its reasons for believing a record is exempt to this office. ORS 192.422(2); *Petition of Bial*, MCDA PRO 25-60 (2025) (a public records petitioner “can only speculate as to the specific form, context, and contents of the contested records”; whether privilege exists is determined from the records submitted for review).

Petitioner is correct that administrative, operational, or policy discussions are not privileged merely because an attorney is copied. *Petition of Bial*, MCDA PRO 22-11 (2022), at 3-4 (“Communications to or from lawyers are only privileged if the primary purpose of the communication is the rendition of professional legal services. Lawyers are not the equivalent of a ‘diplomatic pouch’ rendering anything they convey unquestionably exempt from subsequent disclosure.”) That, however, is not what is contained in these records. The withheld and redacted records clearly document the provision of professional legal services. Each record consists of a request for legal advice, the factual context the employee supplied so that counsel could give such advice, or the advice itself. In a public-facing order I will not describe the contents further. *Turner v. Reed*, 22 Or App 177 (1975) (“Since our decision is subject to review [...], it would be inappropriate for us to disclose the contents of the disputed records.”)

The City’s redactions and withholdings in this case also did not violate ORS 192.338. That section requires a public body to separate exempt from nonexempt material and release the latter; this is why documents are often redacted, rather than withheld in full, under the public records law. But the unit of exemption for attorney-client privilege is the “communication.” An email that asks for legal advice or gives it is privileged as a whole. *Petition of Bial*, MCDA PRO 22-11 (2022), at 4 (“the entire ‘communication’ is exempt if the primary purpose of the communication was the provision of legal services”); *Petition of Friedman*, MCDA PRO 19-35 (2019) (“The exemption applies to the entire communication to the extent that it fairly relates to the provision of legal services.”)

A privileged email must be segregated from non-privileged emails under ORS 192.338, which is precisely what the City did with the redacted email thread it released to petitioner. The City released the top-level email, which forwarded a privileged exchange to another City employee, and redacted the privileged emails beneath it. Forwarding or otherwise disclosing a privileged communication to another representative of the client does not waive privilege. *State ex rel. OHSU v. Haas*, 325 Or 492, 501-02, 510 (1997) (department chair relaying legal advice to faculty was a privileged communication).

B. Other Requested Relief

Petitioner also challenges the City’s statement that the records “may be exempt under additional bases not listed above.” The City has asserted no exemptions in its ORS 192.422(2) response to me that it failed to assert in its initial response to petitioner. Resolving the propriety of such a reservation is thus irrelevant to any order ORS Chapter 192 gives me authority to issue in this case.

Petitioner next argues that the City’s description of its search is insufficient under ORS 192.329(2)(c). That provision states that a public body’s response is complete when it, in addition to the actions described in the other paragraphs of (2), “[c]omplies with ORS 192.338,” the segregation provision discussed above. It says nothing about a search or a description of a search. Nor does any other provision of the public records law require a public body to document its search methodology, identify the repositories it queried, or list its search terms to a requester. *Petition of Barnes*, MCDA PRO 26-35 (2026) (ORS 192.329 “establishes a closed list of permissible responses” and “[t]he legislature did not include a duty to particularize the search.”) I likewise lack the authority to order a more complete search or require a certification of any kind from the public body.

ORDER

Accordingly, the petition is denied.

Regards,

NATHAN VASQUEZ
District Attorney
Multnomah County, Oregon

By: 

Adam Gibbs
General Counsel